

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

-----X  
In re: PROMESA  
Title III  
THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO, No. 17 BK 3283-LTS  
as representative of (Jointly Administered)  
THE COMMONWEALTH OF PUERTO RICO, *et al.*  
Debtors.<sup>1</sup>

-----X  
In re: PROMESA  
Title III  
THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO, No. 17 BK 3566-LTS  
as representative of (Jointly Administered)  
THE EMPLOYEES RETIREMENT SYSTEM OF THE  
GOVERNMENT OF THE COMMONWEALTH OF  
PUERTO RICO,

Debtors.

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<sup>1</sup> The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19 BK 5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

**URGENT JOINT MOTION TO VACATE ADMINISTRATIVE EXPENSE  
SCHEDULING ORDER AND MODIFY ORDER REGARDING STAY AND  
MANDATORY MEDIATION WITH RESPECT TO CERTAIN ISSUES RAISED IN  
CERTAIN CONTESTED MATTERS AND ADVERSARY PROCEEDINGS RELATED  
TO THE BONDS ISSUED BY THE EMPLOYEES RETIREMENT SYSTEM OF THE  
GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO**

To the Honorable United States District Court Just Laura Taylor Swain:

The Official Committee of Unsecured Creditors (the “Creditors’ Committee”),<sup>2</sup> the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “Retiree Committee” and, together with the Creditors’ Committee, the “Committees”), the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), the Special Claims Committee of the Financial Oversight and Management Board for Puerto Rico (the “SCC”), the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and, together with the FOMB and the SCC, the “Government Parties”), certain groups of ERS bondholders represented by Jones Day and White & Case LLP (the “ERS Bondholder Groups”), and The Bank of New York Mellon, as Fiscal Agent for the ERS bonds (the “Fiscal Agent” and, together with the ERS Bondholder Groups, the Committees, and the Government Parties, the “Parties”) hereby file this *Urgent Joint Motion to Vacate Administrative Expense Scheduling Order and Modify Order Regarding Stay and Mandatory Mediation with Respect to Certain Issues Raised in Certain Contested Matters and Adversary Proceedings Related to the Bonds Issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico* (the “Motion”). In support of this Motion, the Parties respectfully state as follows:

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<sup>2</sup> The Creditors’ Committee is the official committee of unsecured creditors for all Title III Debtors, other than PBA and COFINA.

## **BACKGROUND**

1. The active ERS litigation parties have made strides towards streamlining and simplifying ERS-related contested matters and adversary proceedings. To that end, on October 7, 2019, the Court entered an agreed order approving the procedures for objections to claims by holders of bonds issued by ERS [ECF No. 8818] (the “ERS Procedures Order”). Additionally, on October 24, 2019, the Court entered an agreed scheduling order to address matters pending before the Court that relate to the validity of ERS bonds and the scope of liens by the ERS bondholders [ECF No. 8962] (the “ERS Scheduling Order”).

2. Among other things, the ERS Procedures Order set November 21, 2019 as the deadline for the assertion of any post-petition claim (including a request for an administrative expense) against ERS on account of or related to the bonds. [ECF No. 8818, Ex. 2, ¶ 7.]

3. On November 21, 2019, (i) certain ERS bondholders filed the *ERS Bondholders’ Motion and Request for Allowance and Payment of Post-Petition and Administrative Expense Claims* [ECF No. 9285 in Case No. 17-3283 and ECF No. 707 in Case No. 17-3566], (ii) certain ERS bondholders filed the *ERS Bondholders’ Motion and Request for Allowance and Payment of Post-Petition and Administrative Expense Claims* [ECF No. 9294 in Case No. 17-3283 and ECF No. 710 in Case No. 17-3566] (collectively, the “Bondholder Administrative Expense Motions”), (iii) the Fiscal Agent, filed a *Joinder in ERS Bondholders’ Motion for Allowance of Administrative Expense Claim* [ECF No. 9298 in Case No. 17-3283 and ECF No. 712 in Case No. 17-3566] (the “BNYM Joinder”), and (iv) the Fiscal Agent, filed a *Motion for Allowance of Administrative Expense Claims* [ECF No. 9299 in Case No. 17-3283 and ECF No. 713 in Case No. 17-3566] (the “Fiscal Agent Administrative Expense Motion” and, together with the

Bondholder Administrative Expense Motions and the BNYM Joinder, the “Administrative Expense Claims Motions”).

4. On November 25, 2019, the Court entered an Order Scheduling Briefing on Motions of ERS Bondholders and Fiscal Agent for Allowance and Payment of Post-Petition Administrative Expense Claims [ECF No. 9322 in Case No. 17-3283 and ECF No. 721 in Case No. 17-03566] (the “Administrative Expense Scheduling Order”). According to that Order, opposition to the Bondholder Administrative Expense Motions and the Fiscal Agent Expense Motion must be filed by January 21, 2020 and the motions are to set be heard at the Omnibus Hearing scheduled for January 29, 2020.

#### **RELIEF REQUESTED**

5. The Parties jointly request that the Court (i) vacate the Administrative Expense Scheduling Order and (ii) modify the ERS Scheduling Order to stay the Administrative Expense Claims Motions consistent with paragraphs 4-5 of the ERS Scheduling Order, and subject any further scheduling of the Administrative Expense Claims Motions to the meet and confer process set forth in paragraph 6 of the ERS Scheduling Order.

6. Substantial overlap exists between the Bondholder Administrative Expense Claims Motions, the BNYM Joinder, and the portions of the Retiree Committee’s and FOMB’s claim objections that are stayed as reflected in paragraphs 4 and 5 of the ERS Scheduling Order. Paragraphs 4 and 5 of the ERS Scheduling Order stay Parts I, II, and VI ¶¶ 98-109 of the Retiree Committee’s Objection<sup>3</sup> and Parts I.A.ii, I.B, II, and III of the FOMB Objection<sup>4</sup> (the issues

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<sup>3</sup> The “Retiree Committee’s Objection” means *Omnibus Objection of the Official Committee of Retired Employees of the Commonwealth of Puerto Rico, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claims Filed or Asserted by Holders of ERS Bonds Against ERS and The Commonwealth* [ECF No. 6482].

raised therein, the “Stayed Issues”) until the United States Court of Appeals for the First Circuit enters a decision in Case Nos. 19-1699 and 19-1700 (consolidated for briefing and argument). The allegations contained in the Bondholder Administrative Expense Motions and BNYM Joinder by reference<sup>5</sup> address many of the same issues. For example, such allegations take positions with respect to lien existence and survival (*see* Bondholder Administrative Expense Motions ¶ 36), contracts clause issues (*see id.* ¶ 38), takings clause issues (*see id.* ¶ 37), unjust enrichment issues (*see id.* ¶¶ 39, 34), and PROMESA section 407 issues (*see id.* ¶ 40). The following chart illustrates this substantial overlap of issues:

Stayed Issue	Allegation In Bondholder Administrative Expense Motions
No Lien Existence Nor Survival ( <i>see</i> Retiree Committee’s Objection Part VI ¶¶ 98-109; FOMB Objection Parts I.A.ii., I.B.)	“The Post-Petition Legislation transfers the Pledged Property from ERS to the Commonwealth. As decided by the First Circuit, these secured, perfected liens remain on the Pledged Property acquired by the Commonwealth and therefore Movants hold secured claims against the Commonwealth with respect to any Pledged Property in the Commonwealth’s possession.” (Bondholder Administrative Expense Motions ¶ 36).
No Contracts Clause Violations ( <i>see</i> FOMB Objection Part II.A.; Retiree Committee’s Objection Part I ¶¶ 53-58)	“The Commonwealth’s Violation of the United States and Puerto Rico Contracts Clauses.” (Bondholder Administrative Expense Motions ¶ 38).
No Takings Clause Violations ( <i>see</i> FOMB Objection Part II.B.; Retiree Committee’s Objection Part I ¶¶ 47-52)	“The Commonwealth’s Taking of the ERS Bondholders’ Property Without Just Compensation.” (Bondholder Administrative

<sup>4</sup> The “FOMB Objection” means *Objection of Financial Oversight and Management Board, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claims Filed or Asserted Against the Commonwealth by The Bank of New York Mellon, as Fiscal Agent (Claim No. 16775)* [ECF No. 7075].

<sup>5</sup> The BNYM Joinder asserts that it “incorporates by reference the factual and legal arguments made by the movants [of the Bondholder Administrative Expense Motions] as if fully set forth herein.” BNYM Joinder ¶ 12.

Stayed Issue	Allegation In Bondholder Administrative Expense Motions
	Expense Motions ¶ 37)
No Unjust Enrichment of Commonwealth ( <i>see</i> FOMB Objection Part III.A.; Retiree Committee’s Objection Part I ¶¶ 59-62)	“Unjust Enrichment of the Commonwealth.” (Bondholder Administrative Expense Motions ¶ 39); “Unjust Enrichment of ERS.” ( <i>Id.</i> ¶ 34)
No Violation of PROMESA Section 407 ( <i>see</i> FOMB Objection Part III.B.; Retiree Committee’s Objection Part I ¶¶ 59-62)	“The Commonwealth’s Violation of Section 407 of PROMESA.” (Bondholder Administrative Expense Motions ¶ 40).

7. Aside from this overlap of issues, the Fiscal Agent Administrative Expense Motion is a mere reservation of rights and not intended to be scheduled for hearing at this time. This motion is intended to preserve the Fiscal Agent’s “right to assert, at the appropriate time and only if necessary” an administrative expense for its fees and expenses. Fiscal Agent Administrative Expense Motion ¶ 3. The Fiscal Agent did not set an objection deadline or notice its motion for a hearing but merely reserves its right to do so “if and when it becomes appropriate.” *Id.* ¶ 4.

8. The ERS Scheduling Order provides that the parties “shall meet and confer to discuss the schedule for discovery and briefing” of the Stayed Issues upon entry of the First Circuit’s decision in Case Nos. 19-1699 and 19-1700. ERS Scheduling Order, ¶ 6. To avoid premature or duplicative adjudication of overlapping issues and to preserve judicial resources and efficient administration of these Title III cases, the Administrative Expense Claims Motions should be rescheduled in a manner to be determined by the parties under the meet and confer process consistent with paragraph 6 of the ERS Scheduling Order.

9. Accordingly, the Parties respectfully request that the Court enter an order substantially in the form attached hereto as Exhibit A (i) vacating the Administrative Expense Scheduling Order and (ii) modifying the ERS Scheduling Order to stay the Administrative

Expense Claims Motions consistent with paragraphs 4-5 of the ERS Scheduling Order, and subject any further scheduling of the Administrative Expense Claims Motions to the meet and confer process set forth in paragraph 6 of the ERS Scheduling Order.

**NO PRIOR REQUEST**

10. No prior request for the relief sought by this Urgent Motion has been made to this or any other court.

Dated: December 30, 2019

Respectfully submitted,

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**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

-----X  
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MANAGEMENT BOARD FOR PUERTO RICO, No. 17 BK 3283-LTS  
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<sup>6</sup> The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19 BK 5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

**[PROPOSED] ORDER GRANTING URGENT JOINT MOTION TO MODIFY ORDER REGARDING STAY AND MANDATORY MEDIATION WITH RESPECT TO MOTIONS OF ERS BONDHOLDERS AND FISCAL AGENT FOR ALLOWANCE AND PAYMENT OF POST-PETITION ADMINISTRATIVE EXPENSE CLAIMS**

Upon consideration of the Urgent Joint Motion to Modify Order Regarding Stay and Mandatory Mediation with Respect to Motions of ERS Bondholders and Fiscal Agent for Allowance and Payment of Post-Petition Administrative Expense Claims (the “Motion”), and the exhibits attached thereto, and the Court having found and determined that (i) the Court has jurisdiction to consider the Motions and the relief requested therein pursuant to section 502 of the Bankruptcy Code as incorporated by section 301 of PROMESA and Bankruptcy Rule 3007, as incorporated by section 310 of PROMESA; (ii) venue is proper before this Court pursuant to PROMESA section 307(a); (iii) based on the statements and arguments made in the Motion, the relief requested in the Motion is in the best interest of ERS, the Commonwealth and their creditors; and (iv) the legal and factual bases set forth in the Motion establish just cause for the relief granted herein, it is hereby ORDERED THAT:

1. The relief requested in the Motion is GRANTED to the extent set forth herein.
2. The Administrative Expense Scheduling Order<sup>7</sup> is vacated.
3. The ERS Scheduling Order is modified to stay the Administrative Expense Claims Motions consistent with paragraphs 4-5 of the ERS Scheduling Order, and subject any further scheduling of the Administrative Expense Claims Motions to the meet and confer process set forth in paragraph 6 of the ERS Scheduling Order.
4. Nothing herein shall be construed to modify or amend the ERS Procedures Order, including, without limitation, the Claim Objection Deadline (as defined therein).

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<sup>7</sup> Capitalized terms in this order are defined as set forth in the Motion.

5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

SO ORDERED

Dated:

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LAURA TAYLOR SWAIN  
United States District Judge